



May 25, 2001

Mr. Therold I. Farmer
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 2156
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OR2001-2168

Dear Mr. Farmer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147663.

The Leander Independent School District (the "district"), which you represent, received a request for a named teacher's personnel file and information concerning any disciplinary action taken by the school district. You have released most of the information to the requestor. However, you claim that the remaining submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, you assert the submitted information consists of criminal history record information ("CHRI") protected from disclosure under sections 552.101 and 552.102 of the Government Code. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101 of the act. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Accordingly, we will consider your section 552.101 and section 552.102 claims together.

For information to be protected from public disclosure by the common law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation*. In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. We have reviewed the

submitted documents and conclude they do not contain information protected by a common law right to privacy under section 552.102 of the Government Code. The information concerns a former employee's qualifications to act as a teacher, and as such cannot be deemed to be outside the realm of public interest.¹ See Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees).

In addition, you contend that the submitted information includes criminal history record information ("CHRI") that is private under *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Where an individual's criminal history information has been compiled by a government entity, the information takes on a character that implicates the individual's right to privacy. See *Reporters Committee*, 489 U.S. 749 (1989). In this instance, we do not believe that the information the district has marked is a compilation of CHRI as contemplated by *Reporters Committee*. Therefore, we conclude the district may not withhold the requested information under section 552.101 and *Reporters Committee*. The information must be released to the requestor.

Second, you assert that the teacher's social security number and identical teacher's certificate number should be redacted from documents number 1 and 2. Federal law may prohibit disclosure of this employee's social security number. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994). You state the social security number and corresponding identical teacher's certificate number are maintained by the district pursuant to section 21.053 of the Education Code, a law that was re-enacted after October 1, 1990. Section 21.053(a) states that a teacher shall file a valid certificate with the employing district. Educ. Code § 21.053(a). Section 21.053 does not require the district to obtain or maintain a teacher's *social security number*. Therefore, based upon the information you have provided, we have no basis for concluding that the social security number is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the district pursuant to any provision of law, enacted on or after October 1, 1990.

¹The Texas Supreme Court has held that false-light privacy is not an actionable tort in Texas. *Cain v. Hearst Corp.*, 878 S.W.2d 577, 579 (Tex. 1994). In addition, in Open Records Decision No. 579, the attorney general determined that the statutory predecessor to section 552.101 did not incorporate the common law tort of false-light privacy, overruling prior decisions to the contrary. Open Records Decision No. 579 at 3-8 (1990). Thus, the truth or falsity of information is not relevant under the Public Information Act.

You are concerned that confidential information maintained by one governmental body and transferred to another governmental body should remain confidential when that information is subsequently requested by the public under the Public Information Act. For many years, this office has recognized that it is the public policy of this state that governmental bodies should cooperate with each other in the interest of the efficient and economical administration of statutory duties. *See, e.g.*, Attorney General Opinion H-836 (1976); Open Records Decision Nos. 661 (1999), 655 (1997). *But see* Attorney General Opinions DM-353 at 4 n. 6 (1995) (interagency transfer prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized and where receiving agency is not among statute's enumerated entities), JM-590 (1986) (same); Open Records Decision Nos. 655 (1997) (same), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). In adherence to this policy, this office has acknowledged that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinions H-836 (1976), H-242 (1974), M-713 (1970); Open Records Decision Nos. 661 (1999), 655 (1997), 414 (1984). Release to a governmental body is not a release to the public for purposes of section 552.007 of the Government Code, which prohibits the selective disclosure of information, or section 552.352 of the Government Code, which provides criminal penalties for the release of information considered to be confidential. *See id.* In the instant case, the transfer doctrine applies to maintain the confidentiality of social security numbers transferred from the State Board for Educator Certification ("SBEC") to the district because social security numbers maintained by the SBEC are confidential by law. House Bill No. 692, 76th Leg., R.S. (1999) provides for the confidentiality of a licensee's social security number. This provision of law, Act of May 17, 1999, 76th Leg., R.S., ch. 314, § 1, 1999 Tex. Gen. Laws 1218, is codified as a note following section 51.251 of the Occupations Code and states in pertinent part:

The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and is not subject to disclosure under open records law.

Therefore, the social security number in document number 2 must be withheld under section 552.101 of the Government Code.

Lastly, we acknowledge the district's lament regarding the different treatments of the same social security number. The disparity stems from the present state of the laws. There are differing laws addressing the secrecy of social security numbers, and we are bound to apply those laws even if it leads to what the district perceives as "anomalous" results.

In addition to the above, we note that documents number 1 and 2 contain information that may be excepted from disclosure under section 552.117 of the Government Code. Section 552.117 excepts from disclosure the home addresses and telephone numbers, social

security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district must withhold the social security number, home address, and home telephone number of the named teacher under section 552.117 if she made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. The district may not withhold this information under section 552.117 if the named teacher did not make a timely election to keep the information confidential.

Third, you assert that document number 3 may constitute a document evaluating the performance of a teacher under section 21.355 of the Education Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 21.355 of the Education Code provides, "A document evaluating the performance of a teacher or administrator is confidential." This office interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that opinion, this office also concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* You state the former employee was a certified teacher at the time of the evaluation. Based on the reasoning set out in Open Records Decision No. 643, we conclude that document number 3 is not confidential under section 21.355 of the Education Code as it does not "evaluate the performance of a teacher." Therefore, the district may not withhold this document pursuant to section 552.101 of the Government Code.

Lastly, you assert that the submitted documents are interagency and intraagency memoranda protected from disclosure under section 552.111 of the Government Code. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.--Austin 2001, no pet.). An agency's policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). After reviewing the submitted information, we conclude section 552.111 does not apply to the submitted documents because they pertain to an "internal administrative or personnel matter" relating to the named teacher and not to the "policymaking processes" of the district. Accordingly, the district may not withhold the submitted documents under section 552.111 of the Government Code.

In summary, the submitted information does not contain criminal history information protected from disclosure under section 552.102 or section 552.101 and *Reporters Committee*; the social security number, home address, and home telephone number must be withheld if the named teacher timely made her section 552.024 election; the confidentiality of the named teacher's social security number is maintained when it is received from the SBEC; document number 3 does not evaluate the performance of a teacher and therefore must be released to the requestor; and lastly, the submitted documents may not be withheld under section 552.111 because they do not relate to the policymaking processes of the district.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

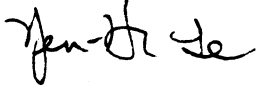
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DBF/seg

Ref.: ID# 147663

Enc.: Marked documents

c: Ms. Monica Polanco, Staff Writer
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(w/o enclosures)